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August 18, 2010

Corbin Davis
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2010-18 – Proposed Amendment of Rule 6.1 of the Michigan Rules of Professional Conduct

Dear Clerk Davis:

The Supreme Court has published for comment two alternative proposals for amending MRPC 6.1, which pertains to pro bono publico service: Alternative A (the “Supreme Court proposal” as discussed in the order by Justices Young, Corrigan and Markman) and Alternative B (the State Bar of Michigan Representative Assembly proposal as modified by the Supreme Court – the “Bar’s proposal”).

The State Bar supports the adoption of Alternative B. The changes made by the Supreme Court to the Bar’s proposal do not alter the meaning or intent of the revisions of MRPC 6.1 submitted to the Court by the Bar in April, 2010. Alternative B is the proposal that was adopted without any opposing votes by the Representative Assembly in March 2010, but modified by the Court to move a sentence previously at Comment 12 into the rule to clarify the voluntary nature of the responsibilities in the rule.

Alternative A is the current rule, with the addition of a sentence clarifying the voluntary nature of the responsibilities in the rule. The State Bar does not prefer Alternative A for the same reasons it submitted a proposal revising the current rule in the first place. Alternative B represents a marriage of the existing Voluntary Pro Bono Standard adopted by the Representative Assembly in 1990 and the ABA Ethics 2000 Model Rule language. Alternative B brings Michigan in line with a number of other states that have adopted the updated Model Rules while retaining the aspirational pro bono goal long embraced by the legal profession in Michigan. Alternative B represents the pro bono standards that Michigan lawyers have strived to achieve since 1990. The need for clarification in the rule was evident in the results of a State Bar survey: “And Justice for All – A Report on Pro Bono in Michigan: 2007.” Responses demonstrated confusion about what type of work qualified as pro bono. A common error, for example, was considering a case pro bono when a paying client ceases to pay.

Alternative B also added language in Comment 9 to acknowledge Michigan’s varied law practice economics in providing that some lawyers will be able to contribute \$500 as an annual pro bono donation while others may not. Consistent with the long tradition in Michigan and nationally that lawyers are uniquely suited to provided legal help for those who cannot otherwise afford it, Alternative B notes that the substantial majority of pro bono legal

work should be devoted to representing persons of limited means or for assisting organizations in matters designed to address the needs of persons of limited means. It also, however, broadens the scope of what additional service may be counted as pro bono. Helpful guidance on these matters in the comments as well as the rule assists lawyers by having all this information in one place – the rule and its accompanying comments. Michigan's existing Voluntary Standard contained specifics to help lawyers, but the recent survey made clear that lawyers often do not find or use the Standard, likely because it is in a separate place from the rule.

In addition to the language of Rule 6.1, the Preamble to the Michigan Rules of Professional Conduct articulates the concept of an individual lawyer's responsibility with regard to the delivery of legal services to those who cannot afford them where it states:

A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence in their behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

Alternative A, while not a step backwards, is not a step forward. It does not articulate the Voluntary Pro Bono Standard even as it existed in 1990, much less as it has been since revised. It provides little guidance to practitioners – even in the commentary – about what type of work qualifies or how to gauge a financial contribution in lieu of or in addition to the performance of legal work. Alternative B provides thorough information without mandating the manner in which lawyers choose to discharge the professional responsibility to provide legal services to those unable to pay.

We thank the Court for its publication of the proposed amendment.

Sincerely,



Janet Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Charles R. Toy, President
Elizabeth Moehle Johnson, Representative Assembly Chair
Victoria A. Radke, Representative Assembly Chair-Elect